

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
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Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CC Docket No. 92-90
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Reply Comments of ADVAL Communications, Inc.

ADVAL Communications, Inc. ("ADVAL") is an electronic document delivery and permissioned e-marketing company, with sales offices in Boston, New York, Atlanta, Ft. Lauderdale, Detroit, Phoenix, Los Angeles, and other cities throughout the U.S. ADVAL's corporate headquarters are located in Southfield, Michigan.

ADVAL provides enhanced messaging and communications services to customers to satisfy a range of demanding information distribution needs. ADVAL has grown rapidly to establish itself as an industry leader, providing mission critical communications services to a variety of vertical industries, including the travel, financial and publishing marketplaces. Its products and services include fax broadcast, e-mail broadcast, and interactive e-mail solutions.

ADVAL has reviewed several of the Comments filed in this proceeding and believes that the record in this docket would be aided by the submission of these Reply Comments, which primarily pertain to the facsimile provisions of the Telephone Consumer Protection Act of 1991 ("TCPA").

Businesses should be exempt from the TCPA fax regulations

The TCPA currently does not distinguish between business and residential recipients. We believe that there are significant differences between these two entities and that future rules that regulate telemarketing, fax, voice broadcasting and e-mail communications from third parties should make a distinction.

Some of the differences between businesses and consumers is as follows:

- Businesses use fax as a primary means of communications for their offices.
- Businesses are comfortable with high volumes of messages and are typically not disturbed by messages that come in after hours.
- There are very low marginal costs of additional fax messages being sent to businesses since fax machines are designed for moderate to high volume faxes. Assuming that inbound direct mail pieces are not “free” and are subsidized by an individual business’s postal rates, fax has one of the lowest costs for a business to receive inbound marketing or industry communications messages.
- Businesses share communications across the many channels of direct mail, fax, e-mail, etc. and generally need all these channels for both sending and receiving without significant government regulation
- Business can better protect themselves from unscrupulous senders of any form of business communications when compared to consumers.

Any regulation that restricts fax communications should separate consumer fax numbers from business fax numbers. Certainly businesses who publish a business fax number have a different standard of privacy than does an individual home fax owner.

Communities of Interest versus “Established Business Relationship”

There is not a bright line that distinguishes Communities of Interest in the business community. When travel agents book with airlines but clear their transactions through a middleman, they are not technically “doing business” directly with the airline. What about other indirect relationships? Can a pharmaceutical company, who distributes through pharmacies and does not have a direct business relationship with a doctor, send critical information to the doctor’s fax machine? New drug offers include offers to purchase but also include other critical information to doctors.

It is not the inconvenience of the communications which is pertinent, e.g., a urologist receives a message about a drug used for mostly pediatric use, any inconvenience is outweighed by the public interest of the drug industries ability to reach the medical community quickly and inexpensively and completely through the American Medical Association (“AMA”) fax list.

Many companies use industry fax updates to keep them up-to-date on industry issues because of its low-cost and timeliness. As an example, travel agents use the fax machine to receive updates from the airlines, travel consolidators, car rental companies, etc. Many of these messages have commercial offers that recipients need to receive to keep up to date on airfares, availability, and etc. but the sender does not have a direct relationship.

We would ask that any future changes in the law or in Federal Communications Commission (“FCC”) regulations allow suppliers or vendors who normally send valued information to businesses within a community of interest be specifically excluded from the TCPA regulations. This includes messages sent by travel suppliers to travel agents, drug companies to physicians, plumbing supply companies to plumbers, and other communities aligned to a set of mutual interests.

Unfairly regulating fax and e-mail will result in Government selection of business-to-business communications channels

In spite of the great burden that direct mail puts on both the postal system (tax payers) and companies who process this mail, no rational person would suggest that we stop businesses from contacting businesses by mail. All of the overhead implicit with direct mail would not motivate the Government to outlaw direct mail as a Business-to-Business ("B2B") communications channel. Direct mail will always be available for B2B. Any regulation of fax and e-mail will have the effect of the Government selecting the method of B2B communications.

National "Opt-Out" Lists Let the Receiver Make the Decision

With the adoption of a State and/or National opt-out fax list, the industry can in effect, self regulate itself by letting the recipient choose whether they want to receive fax communications based on the individual value of the communications. It is at this point that the FCC and the States should intervene by regulation.

Discrimination between fax, e-mail, direct mail, voice communications, telemarketing

The current TCPA discriminates between the various components of communications. In one case, it suggests "hours of day" are the standard. In others, it is an "opt-out" database. In fax, there is a per violation cash penalty which opportunistic attorneys have used to create class action lawsuits with no "cure" provisions.

B2B communications are the lifeblood of commerce.

B2B communications are a fact of life. Some of these business communications include "direct marketing" types of messages. Pharmaceutical companies send marketing information to doctors, plumbing supply companies send marketing information to plumbers and electrical supply companies to electricians. This practice will not stop, as it is part of the commercial system of doing business.

The question is: what reasonable practice can be adopted to provide a balance between appropriate privacy protections and legitimate business communications?

Fax carriers should not be penalized for traffic sent by third parties

Most fax broadcasting service bureaus carry millions of minutes of B2B communications every month. Based on recent technology, many large customers upload both the list of recipients and the fax document electronically through the Internet. Online document launcher programs facilitate the uploading of jobs directly by the customer. The fax broadcasting service bureau never sees the list or the document. This is very similar to long distance telephone calls which are made by businesses and in which the content of the call is unknown to the long distance carrier.

It is our position that the fax service bureau is not responsible for customers who violate TCPA regulations using their own lists which are not under the control of the fax broadcasting service bureau.

Respectfully submitted,

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